Resources Mining Pte Ltd v Puteh bte Abdullah & Ors

HIGH COURT (SINGAPORE) - SUIT NO 1641 OF 1988
GRIMBERG JC
21 AUGUST 1989

Land Law - Agreement for sale and purchase of land - Purchaser to obtain planning approval by a certain date - Whether time of the essence - Whether term for benefit of both parties

Civil Procedure - Injunction - Lis pendens - Whether injunction and lis pendens should be discharged - Balance of convenience - Likelihood of land being acquired if injunction continued

Civil Procedure - Statement of claim - Application to strike out - Whether claim disclosed reasonable cause of action - Whether claim frivolous or vexatious or an abuse of process

The plaintiffs in these proceedings entered into two separate agreements ('the exchange agreement' and 'the sale agreement' respectively) for the purchase from the defendants of the defendants' respective interests in two parcels of land ('the land'). The exchange agreement was concluded between the plaintiffs and the first to sixth defendants; the sale agreement was entered into between the plaintiffs and the seventh and eighth defendants. By cl 14 of the exchange agreement, read with its other terms, it was a condition precedent of the agreement that a grant of written permission ('the GWP') and building plan approval ('building approval') in respect of the land be obtained by the plaintiffs within six months of the date of the exchange agreements. Thereafter if the GWP or building approval was not obtained the agreement was to automatically determine and each party was to be released from any further obligation. Clause 8 provided for time to be of the essence.

The plaintiffs failed to obtain the GWP and building approval by 3 February 1988 as required by the agreement. The plaintiffs then began these proceedings against the defendants claiming, inter alia, a declaration that the exchange agreement and sale agreement continued to be valid and subsisting, and an injunction to restrain the defendants from conveying the land to any third party. The plaintiffs asserted in the statement of claim that the condition requiring the GWP and building approval to be obtained within six months of the date of the exchange agreement was a condition for the benefit of the plaintiffs, which the plaintiffs could and did waive. It was also alleged that the defendants were obliged to agree on an extension of time for the securing of the GWP and building approval.

The plaintiffs applied for ex parte, and obtained from a judge in chambers, declarations that their right, title and interest to and in the land was in question, and that the declarations be enforced as lis pendens for a period of 12 months from the date of each order ('the lis pendens'). The defendants applied by summons to strike out the plaintiffs' statement of claim either under O 18 r 19 or under the inherent jurisdiction of the court, and for the lis pendens to be discharged. The plaintiffs' motion for the continuation of the ex parte injunction was then heard at about the same time as the defendants' application. An oral judgment was given by the present judge which is appended to the end of the main judgment. After further argument was heard, the judge confirmed his judgment and issued the main judgment.

Held, dismissing the defendants' application for striking out but discharging the lis pendens:

(1) The present case was not a plain or obvious case for a striking out since the statement of claim, on the face of it, disclosed a reasonable cause of action. The plaintiffs' claim was manifestly not an abuse of process.

(2) The court found that time was of the essence and that the plaintiffs had failed to obtain the GWP and building approval by the contractually stipulated date, for which they only had themselves to blame.

(3) The condition requiring the GWP and building approval to be obtained enured for the benefit of both the vendors and the purchasers, and was therefore not capable of being waived by the plaintiffs/purchasers unilaterally.

(4) The defendants were thus not obliged to grant the plaintiffs an extension of time.

(5) These conclusions were enough to persuade the court that the injunction ought not to be continued. The court was influenced by balance of convenience considerations, because it was common ground that if the GWP and building approval were not obtained shortly, the land was likely to be compulsorily acquired. If the injunctions were discharged an alternative buyer was available, who might save the land from acquisition.

(6) The court has inherent jurisdiction to dismiss an action which is an abuse of the process of the court. This jurisdiction is one which ought to be very sparingly exercised, and only in very exceptional cases.

[*Editorial Note*: The defendants have appealed to the Court of Appeal vide Civil Appeal No 67 of 1989. The plaintiffs' appeal to the Court of Appeal vide Civil Appeal No 68 of 1989 was filed out of time.]

Cases referred to

1 *Hubbuck* v *Wilkinson* [1899] 1 QB 86 (refd)
2 *A-G of the Duchy of Lancaster* v *L & NW Rly Co* [1892] 3 Ch 274 (refd)
3 *Dyson* v *A-G* [1911] 1 KB 410 (refd)
4 *Lawrance* v *Norreys* (1890) 15 App Cas 210 (refd)
5 *Lea* v *Thursby* (1904) 90 LT 667 (refd)
6 *Emerson* v *Grimsby Times* (1926) 42 TLR 238 (refd)

Legislation referred to

Rules of the Supreme Court 1970 O 18 r 19

Cheong Yuen Hee (*Ng Su-Ran* (*Ms*) with him) for the plaintiffs.

Mirza Namazie (*Tan Teng Muan* with him) for the defendants.

Grimberg JC: The plaintiffs in these proceedings entered into separate agreements for the purchase from the defendants of the defendants' respective interests in two parcels of land ('the land'). Both agreements ('the exchange agreement' and 'the sale agreement' respectively) were dated 4 August 1987. The exchange agreement was concluded between the plaintiffs and the first to sixth defendants; the sale agreement was entered into between the plaintiffs and the seventh and eighth defendants.

By cl 14 of the exchange agreement, read with its other terms, it became a condition precedent of that agreement that a grant of written permission ('the GWP') and build-

ing plan approval ('building approval') in respect of the land be obtained by the plaintiffs within six months of the date of the exchange agreement, 'or such further period as the parties may in the meantime mutually agree to in writing'. The clause proceeds thus:

> Thereafter if (the GWP) or (building approval) is not obtained this agreement shall automatically determine and each party shall be released from any further obligation under this agreement and neither party shall have any claim against the other.

Clause 8 of the exchange agreement provided for time to be of the essence in relation to all its provisions.

It followed from cl 14 of the exchange agreement that, subject to the parties agreeing on extension of time in writing, the plaintiffs had until 3 February 1988 within which to secure the GWP and building approval.

By cl 3 of the sale agreement, completion under it was subject, inter alia, to completion under the exchange agreement. Thus, for all practical purposes, completion of both agreements turned on the plaintiffs obtaining GWP and building approval within the time stipulated by cl 14 of the exchange agreement, or within any agreed extension of that time. The agreements were linked in this critical respect. In the event, the plaintiffs failed to obtain the GWP and building approval by 3 February 1988. Prior to this date the plaintiffs requested the defendants for an extension of time, in the first instance for an indeterminate period and subsequently for six months, within which to secure the GWP and building approval. The defendants either ignored or declined these requests.

On 16 August 1988, some six months after the date upon which they were obliged to secure the GWP and building approval, the plaintiffs began these proceedings against the defendants. They claimed, inter alia, a declaration that the exchange agreement and sale agreement continued to be valid and subsisting, and an injunction to restrain the defendants from conveying the land to any third party. On 17 August 1988, I granted the plaintiffs an injunction, ex parte, in those terms.

On 9 September and 24 October 1988, the plaintiffs applied for ex parte, and obtained from a judge in chambers, declarations that their right, title and interest to and in the land was in question, and that the declarations be enforced as lis pendens for a period of 12 months from the date of each order. I shall refer to these orders collectively as 'the lis pendens'. Meanwhile, on 26 August 1988 the plaintiffs had filed a motion for the continuation of the ex parte injunction granted by me on 17 August. The plaintiffs' motion was heard by me, inter partes, on 13 June 1989. I declined to continue the ex parte interim injunction, and awarded the defendants the costs of the plaintiffs' motion. The plaintiffs' counsel asked for further argument, after hearing which I confirmed my order refusing to continue the injunction. I gave an oral judgment ('the oral judgment') a transcript of which, since it is relevant, is annexed as a schedule to these grounds of decision. The plaintiffs now appeal against my order vacating the lis pendens, but not against the order by which I declined to continue the injunction. In regard to the plaintiffs' appeal, I have nothing to add to the oral judgment.

By summons filed on 17 May 1989, the defendants applied:

(i) under O 18 r 19 or alternatively under the court's inherent jurisdiction, for the statement of claim to be struck out; and
(ii) for the lis pendens to be discharged.

I heard this summons on 26 June 1989. I declined to strike out the plaintiffs' statement of claim, but discharged the lis pendens. There is now an appeal by the defendants against my refusal to strike out.

The defendants sought a striking out of the statement of claim on the grounds that it discloses no reasonable cause of action; that it is frivolous and vexatious, and that it amounts to an abuse of process. The grounds upon which a party is entitled to a striking out order have been stated on many occasions, and in different ways, for example '... only in plain and obvious cases ...' - *Hubbuck* v *Wilkinson*[1] at p 91; when the claim or answer is on the face of it 'obviously unsustainable' - *A-G of the Duchy of Lancaster* v *L & NW Rly Co*;[2] [or] where the cause of action is 'obviously bad and almost incontestably bad' - *Dyson* v *A-G*[3] at p 419.

By para 11 of the statement of claim, it is asserted that the plaintiffs took all necessary steps to obtain the GWP and building approval within the period stipulated by the exchange agreement. The steps so taken are particularized under that paragraph. It is further asserted by para 14 of the statement of claim that the condition requiring the GWP and building approval to be obtained within six months of the date of the exchange agreement is a condition for the benefit of the plaintiffs, which the plaintiffs could and did waive. It was also alleged that the defendants were obliged to agree on an extension of time for the securing of the GWP and building approval, and were in breach of an implied term of the exchange agreement by preventing the plaintiffs from obtaining the GWP and building approval.

It is plain from the terms of the oral judgment, that I concluded:

(i) that time was of the essence and that the plaintiffs had failed to obtain the GWP and building approval by the contractually stipulated date, for which they only had themselves to blame;
(ii) that the condition requiring the GWP and building approval to be obtained by that date was not a condi-

tion for the benefit of the plaintiffs, but that it enured for the benefit of both the vendors and the purchasers, and was therefore not capable of being waived by the plaintiffs/purchasers unilaterally; and

(iii) that the defendants were not obliged to grant the plaintiffs an extension of time.

Those conclusions were enough to persuade me that the injunction ought not to be continued. I was influenced by balance of convenience considerations, because it was common ground that if the GWP and building approval were not obtained shortly, the land was likely to be compulsorily acquired. The plaintiffs had put it beyond themselves to secure the GWP and building approval expeditiously; whereas if the injunction were discharged an alternative buyer was available, who might prove to be the defendants' white knight and save the land from acquisition. For all these reasons I declined to continue the injunction, and discharged the lis pendens by the same process of reasoning.

In my judgment, to strike out the statement of claim and thus 'drive the plaintiffs from the judgment seat', and a possible remedy in damages, is a different matter. It was not, in my view, a plain or obvious case for a striking out since the statement of claim, on the face of it, disclosed a reasonable cause of action. The plaintiffs' claim was manifestly not an abuse of process, in the sense of Lord Herschell's dictum in *Lawrance* v *Norreys*[4] at p 219, which was in the following terms:

> It cannot be doubted that the court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the court. It is a jurisdiction which ought to be very sparingly exercised, and only in very exceptional cases. I do not think its exercise would be justified merely because the story told in the pleadings was highly improbable, and one which it was difficult to believe could be proved.

As for the defendants' contention that the claim is frivolous and vexatious, the authorities are clear that for an action to be stopped in its tracks that contention must be clearly made out. It might, for example, be so said if the action were not brought 'in good faith, to try a legal point which ought to be tried' - see *Lea* v *Thursby*[5] discussing the decision of the judge at first instance; or if the claim were, on the face of it, 'obviously ridiculous' or 'absurd', as was the case in *Emerson* v *Grimsby Times*.[6]

In my judgment, the plaintiffs' claim in this case cannot be described as frivolous and vexatious. It merits a full trial, despite my conclusion that a case was not made out for the continuation of the interim injunction. It was implicit in that finding that the plaintiffs should be left to their remedy in damages, a situation which junior counsel for the defendants appeared to accept in support of his argument that the lis pendens should be discharged.

It was for all the reasons I have stated that I declined to make an order striking out the statement of claim. Since the defendants failed on this prayer of their summons, but succeeded in the prayer seeking a discharge of the lis pendens, I awarded the defendants half their taxed costs of the summons.

Schedule: Oral Judgment of **Grimberg JC**: I have sought to approach this case, not only in accordance with what I understand the law to be, but also I hope with some pragmatism. Boiled down to the barest essentials, the defendants agreed to sell their respective interests in a piece of land to the plaintiffs, subject to the plaintiffs obtaining a grant of written permission and building approval, not later than six months from the date of the agreement for sale. The obtaining of that grant, as well as of the building approval, depended on the plaintiffs, subject to the defendants assisting as and when they might be required to do so.

Time was of the essence in the agreement, which was freely negotiated at the time when the plaintiffs were under advice from solicitors. It is obvious from the face of the agreement that it was prepared by solicitors. The plaintiffs entered into the agreement with their eyes open, fully conversant with what their obligations were under it. In my judgment, the condition in the agreement requiring that the grant of written permission and building approval be obtained within the stipulated time, was for the benefit of all parties to the agreement, and not simply for the benefit of the plaintiffs. The defendants were entitled to know where they stood because a threat of compulsory acquisition was hanging over the property at that time, and hangs over the property now. If the plaintiffs failed to obtain the grant of written permission and building approval within the stipulated time, the defendants were entitled to look elsewhere for rescue from the clutches of the Collector of Land Revenue. In my view, the defendants were under no obligation in that situation to grant the plaintiffs an extension of time for fulfilling the plaintiffs' obligations under the agreement, although a provision entitling the defendants to grant such an extension was to be found in the agreement.

In the event, the plaintiffs failed to obtain a grant of written permission and building approval by the contractually stipulated date. The blame for their failure to do so can properly be laid at their own door, because they declined to allow their architects to apply for early determination of the development charge. Grants of written permission and building approval cannot be obtained unless the development charge is first paid. By the time the plaintiffs galvanized themselves into action, there was absolutely no way that the grant or building approval could have been obtained by the date stipulated in the agreement.

In that situation the plaintiffs came to me, ex parte, well after the deadline for the obtaining of the grant of written permission and building approval had expired,

and asked for an injunction to restrain the defendants from selling the land to anyone else. I granted them the injunction they sought. I say no more than that certain critical information, adverse to the plaintiffs, was not before me when I made the ex parte order, but I hasten to add that I do not suggest for a moment that the information was deliberately withheld.

Now, when the plaintiffs came before me for continuation of the injunction, inter partes, I declined to continue it after full argument, with all the relevant facts before me. I was then called upon to decide whether a lis pendens registered against the land by the plaintiffs ought to be discharged. To have allowed the lis to remain registered against the property would have defeated the order I made declining to continue the ex parte injunction. I have now heard further argument and I can see no reason for altering my decision to discharge the lis pendens.

In my judgment, the arguments against the continuation of the interim injunction, which arguments I upheld, apply equally to the issue as to whether the lis pendens should stay. I hold that there is sufficient reason, for the purposes of the old Rules of the Supreme Court O 47 r 23(1), for the lis pendens to be discharged and I so order in my discretion in equity. I should add that I do not consider that I am precluded from making that order by reason of the fact that I have declined to strike out the plaintiffs' action on the grounds that it is frivolous and vexatious and/or an abuse of process.

Insofar as the application to stay the order for the discharge of the lis pendens is concerned, I am obliged to decline a stay because to stay the order would be to render largely nugatory the orders by which I refused to continue the injunction and discharged the lis pendens. The order for costs previously made stands and I make no order with reference to the costs of today.

There will be leave to appeal.

Order accordingly.

Solicitors: *Chow Peng & Partners; Mallal & Namazie.*

Reported by *Terence Tan Bian Chye*

Ruby Investment (Pte) Ltd v Candipark Pte Ltd

HIGH COURT (SINGAPORE) - DISTRICT COURT APPEAL NO 84 OF 1987
COOMARASWAMY J
8 AUGUST 1989

Civil Procedure - Judgment on admissions - Whether order final - Meaning of 'final' - Whether decision of judge on application interlocutory or final order - Whether leave needed to appeal from decision of judge - Res judicata - Decision of present court not to constitute such at hearing of action - Subordinate Court Rules 1986, O 27 r 3, O 55 rr 1(1), (5) & 2 - Supreme Court of Judicature Act (Cap 322, 1985 Ed), s 21 - Subordinate Courts Act (Cap 321, 1985 Ed), ss 42 & 47

Evidence - Informal admissions, effect of - Judgment on admissions - Result inconsistent with issues to be determined at trial

Words and Phrases - 'Final' - Subordinate Courts Rules 1986, O 55 r 1(5)

The appellants agreed, in a written contract ('the contract'), to lease to the respondents a unit in a building ('the unit'). The respondents alleged that the appellants had made an oral promise that the appellants would give vacant possession of the unit to the respondents by the end of March 1982. The appellants denied that such a promise had been made. Following the appellants' failure to give vacant possession according to the oral promise, the respondents rescinded the contract for this failure. The respondents commenced an action in DC(T) 13257 of 1987 against the appellants to claim that they had validly rescinded the contract, that they were entitled to a refund of the deposit they had paid to the appellants under the contract and that they were entitled to damages. While awaiting trial, the respondents filed an application for judgment on admissions pursuant to O 27 r 3 of the Subordinate Courts Rules 1986 ('the application'). It was said that these admissions were contained in the accounting records of the appellants and in the letters from the auditors of the appellants to the respondents. The deputy registrar who heard the application gave judgment in favour of the respondents and on appeal, the district judge also decided in favour of the respondents. The appellants filed a notice of appeal although they had not been given leave to appeal by the district judge, who had awarded $300 costs to the respondents in the appellants' attempt to obtain the leave. The respondents argued that to allow the hearing of the appeal without leave would fail to give effect to O 55 r 1(5) and r 2 of the Subordinate Court Rules 1986, would fail to give effect to the district judge's refusal to give leave to appeal and would open the floodgates for appeals against the decisions made in the subordinate court in interlocutory applications. The appellants argued that the district judge had misconstrued the word 'final' in O 55 r 1(5), that a judgment on admissions under O 27 r 3 is a final judgment/order which gives rise to a right of appeal without leave of the judge who made the order and that s 21 of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) gives the right of appeal from any decision of the district court or magistrate court.

Held, allowing the appeal:

(1) The authorities showed that the word 'final' in O 55 r 1(5) merely means a conclusive determination of the principal matter in question and establishes the right of the plaintiff or the liability of the defendant on the merits of the case as opposed to an interlocutory order.

(2) The court was thus of the view that it does not mean there is no right of appeal from the decision of the district judge.